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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,915	09/15/2005	Bernard Guglielmini	044195-3130	3005
22204 7590 11/04/2009 NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			EXAMINER DOUYON, LORNA M	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 11/04/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,915

Applicant(s)

GUGLIELMINI ET AL.

Examiner

Lorna M. Douyon

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

1. This action is responsive to the amendment filed on June 30, 2009.
2. Claims 1-11 and 13-17 are pending. Claims 3 and 5 are amended.
3. The objection to claims 3 and 5 for minor informalities is withdrawn in view of Applicants' amendment.
4. Claims 1-7, 9-11, 13-15 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Catlin et al. (US Patent No. 7,125,828), hereinafter "Catlin" for the reasons set forth in the previous office action, which is repeated below for Applicants' convenience.

Catlin teaches a water-soluble pouch which comprises a plurality of compartments in generally superposed or superposable relationship, for example, the plurality of compartments can be symmetrically arranged one above another, side by side (such that they can be folded into a superposed relationship) or any other convenient disposition provided that the compartments are superposable in use, each containing one or more detergent active or auxiliary components (see abstract; col. 3, lines 53-59). Water-soluble film of different thickness can be used to obtain differential dissolution under in-use conditions (see col. 5, lines 62-64; col. 19, lines 57-61).

Rectangular pouches inherently have regions of different film thickness on the film and this can contribute to improve the dissolution profile of the pouch (see col. 7, lines 42-45). Preferred pouch materials are polymeric materials such as polyvinyl alcohols or

polysaccharides including starch (see col. 14, lines 29-42). The open pouches can be formed using thermoforming (see col. 7, lines 46-49), which are covered, closed and sealed with film closure means after filling (see col. 9, lines 1-4). In the process of making the pouch, Catlin teaches that the film can be held with grips or clips on the edges of the surface where there are no moulds (see col. 22, lines 16-22). Catlin, however, fails to specifically disclose at least part of the wall of at least one chamber will dissolve before the remainder wall of the chamber, the at least part of the wall which dissolves before the remainder wall dissolves defining a releasable part which is released undissolved, as required in claim 1, wherein the releasable part is a panel, as required in claim 2; a clip as required in claim 3; and wherein the pouch is formed by injection moulding as required in claim 6 and 14.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the thin portion of the water soluble pouch of Catlin to dissolve first, thereby releasing the thick portion which reads on the panel because the water soluble pouch of Catlin has regions of different film thickness.

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to seal the pouch of Catlin with clips because it is shown by Catlin in col. 22, lines 16-22 that the water-soluble film can be held with clips, hence, it would also be reasonable to seal it with clips because it is generally known to seal open pouches with clips.

With respect to the pouch being formed by injection moulding, it should be noted that claims 6 and 14 are product-by-process claims, hence, any difference imparted by

the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

5. Claims 8 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Catlin as applied to the above claims, and further in view of Desmarais et al. (US Patent No. 6,484,879), hereinafter "Desmarais" for the reasons set forth in the previous office action, which is repeated below for Applicants' convenience.

Catlin teaches the features as described above. Catlin, however, fails to disclose polylactic acid as the material for the water-soluble container.

Desmarais, an analogous art, teaches the equivalency of polyvinyl alcohol and polylactic acid as water-soluble film materials for a water soluble bag (see claim 24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the polyvinyl alcohol of Catlin with polylactic acid because the substitution of art recognized equivalents as shown by Desmarais is within the level of ordinary skill in the art.

Response to Arguments

6. Applicants' arguments filed June 30, 2009 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Catlin, Applicants argue that Catlin is concerned with the sequential release of components in a water soluble pouch, and as described in column 5, line 65 through column 6, line 3, Catlin is concerned with phased or sequential delivery of detergent actives and that each of the compartments of the pouch have different disintegration rate or dissolution profile during use. Applicants also argue that Catlin does not disclose or suggest a container having "at least part of the first wall which dissolves before the remainder wall dissolves defining a releasable part, and when the at least part of the first wall dissolves the releasable part is released undissolved," as recited in claim 1. Applicants also argue a hindsight reconstruction of the claims. Applicants also argue that Catlin teaches away from the claimed invention because Catlin discloses an arrangement in which complete dissolution of each chamber is required in order to achieve delivery, i.e., a releasable part of Catlin's pouch is not left undissolved.

The Examiner respectfully disagrees with the above arguments because in col. 5, lines 62-64, and col. 19, lines 57-61, Catlin teaches that water-soluble film of different thickness can be used to obtain differential dissolution under in-use conditions, and in col. 7, lines 42-45), Catlin teaches that rectangular pouches inherently have regions of different film thickness on the film and this can contribute to improve the dissolution profile of the pouch (see col. 7, lines 42-45). As stated in paragraph 4 above, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the thin portion of the water soluble pouch of Catlin to dissolve first, thereby releasing the thick portion which reads on the panel because the water soluble pouch of Catlin has regions of different film thickness. It is expected that due to the thickness of the thick portion, at time of release, it is undissolved, but would dissolve in a sufficient time, as in the case of the present claim 1, since the container is water-soluble (see line 1 of the claim). Please note that there is nowhere in claim 1 which requires that the releasable part remains undissolved, just "released undissolved".

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the obviousness rejection of claims 8 and 16, Applicants argue that *"As Desmarais does not disclose a container with an "at least part of the first wall which dissolves before the remainder wall dissolves defining a releasable part, and when the at least part of the first wall dissolves the releasable part is released undissolved," as recited in claim 1, it fails to cure the deficiencies of Catlin"*.

The above response to Catlin applies here as well.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796